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EXAMINER

PEREZ, JULIO R

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2617

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/759,220
Filing Date: January 16, 2001
Appellant(s): HAYASHI, KEIICHI

Carl J. Palleggrini (Reg. No. 40,766)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 26, 2006 appealing from the Office action mailed July 19, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6366791	Lin et al.	4-2002
US 6308086	Yoshino; Hideyuki	10-2001

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1- 3, 8 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin et al. (6366791).

Regarding claim 1, Lin et al. disclose a mobile communication terminal equipped with an Internet browser function, comprising: means for fetching melody data from a web-based server apparatus by using said browser function (col. 3, lines 9-29; col. 4, lines 1-11; Figs. 2, 4, the mobile stations comprise the capability to access the web page of the network in order to download musical scores, that is melody data, containing ringing tones); and tone setting means for setting ringing tones based on tone information contained in said melody data (col. 4, lines 1-57; col. 5, lines 1-2; col. 5, lines 16-27; Fig2. 2, 4, the ringing tones can be implemented once received and stored within the SIM, where the ringing tones are programmed in accordance with the ringing tone patterns).

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Regarding claim 2, Lin et al. disclose the mobile communication terminal, wherein if said melody data contains no tone information, said tone setting means sets a ringing tone based on preset tone information (col. 3, lines 31-67; col. 4, lines 1-11, the download is executed based on the contents of the music or tones desired by the subscriber and approved beforehand by the subscriber; if no tone is approved, hence, no tone would be downloaded, and indeed the same tones already stored will stay active).

Regarding claim 3, Lin et al. disclose the mobile communication terminal, wherein if said melody data contains tone information, said tone setting means judges the validity of said tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server).

Regarding claim 8, Lin et al. disclose a ringing method for a mobile communication terminal equipped with an Internet browser function, comprising: having access to a web-based server equipment by means of said browser function (col. 3, lines 9-29; col. 4, lines 1-11; Fig. 2, refs. 35, 40, 45, 55; Fig. 4, the mobile stations comprise the capability to access the web page of the network in order to download musical scores, that is melody data); notifying said server equipment of desired melody data in conformity with said access (col. 3, lines 21-29; Fig. 2, the terminal may be used to request musical tones from the server via the Internet); receiving said desired melody data from said server equipment (col. 3, lines 31-46; col. 4, lines 1-11, the mobile obtains the musical tones from the server for later playing); storing said received desired melody data

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(col. 2, lines 22-57; col. 4, lines 12-38; Fig. 4, the terminal possesses the capability to store the melody tones within); judging whether said stored melody data contains tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server); fetching said tone information if it is judged that said melody data contains the tone information (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, 4, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server); setting a tone for playing a melody in accordance with said melody data, based on said fetched tone information (col. 4, lines 1-57; col. 5, lines 1-2; col. 5, lines 16-27, the ringing tones can be implemented once received and stored within the SIM, where the ringing tones are programmed in accordance with the ringing tone patterns); and playing said melody in said set tone (it is inherent as evidenced by the fact that one of ordinary skill in the art would have recognized that the tone is to be played as soon as a ringing melody is downloaded, col. 3, lines 9-46).

Regarding claim 9, Lin et al. disclose the ringing method for a mobile communication terminal, wherein if said melody data contains no tone information, a ringing tone is set based on preset tone information (col. 3, lines 31-67; col. 4, lines 1-11, the download is executed based on the contents of the music or tones desired by the subscriber and approved beforehand by the subscriber; if no tone is approved, hence, no tone would be downloaded, and indeed the same tone some tones already stored will stay active).

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Regarding claim 10, Lin et al. disclose the ringing method for a mobile communication terminal, wherein if said melody data contains tone information, the validity of said tone information is judged (col. 3, lines 31-67; col. 4, lines 1-11; Fig. 2, the system may determine the type of tones to be downloaded during the decision to acquire the tones from the web server).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-7, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al. (6366791) in view of Yoshino et al. (6308086).

Regarding claims 4, 11, Lin et al. do not explicitly disclose the mobile communication terminal, wherein said tone setting means sets ringing tones by performing a modulation processing based on said tone information contained in said melody data.

Yoshino et al. teach a mobile communications terminal with extraction of audio signal frequencies means, which, in turn need to be converted to readable form to a transducer (col. 4, lines 32-40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et al. so as to include modulation processing as per the teachings

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of Yoshino et al. so that the set ringing tones in the musical scores can be executed as ringing tone patterns on the MS.

Regarding claims 5, 12, the combination of Lin and Yoshino discloses, wherein said tone information contained in said melody data constitutes tone parameters used for said modulation processing (Yoshino, col. 4, lines 34-36, the extracting of frequency components from the audio signal, corresponds to ringing or tone parameters).

Regarding claims 6, 7, 13, 14, Lin et al. do not explicitly disclose the mobile communication terminal, further comprising: ringing-speed setting means for setting a tempo at which a melody is played in accordance with said melody data.

Yoshino et al. teach a mobile communications terminal with periodicity controlling means to control the rhythm of a melody to be reproduced (col. 2, lines 54-55; col. 6, 16-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further implement the communication terminal of Lin et al. so as to include rhythm computational means as per the teachings of Yoshino et al. so as to have means of a timing signal for setting a tempo; that is, the relative speed at which music is played in accordance with the melody data being received.

(10) Response to Argument

I. Appellant argues that Lin does not disclose tone setting means that generates ringing tones by using tone information contained in said melody data. However, the examiner respectfully disagrees as Lin discloses, "the HLR 26 retrieves the ringing tone pattern associated with the selected musical scores from the database therein and downloads the ringing tone pattern to the MS," [col. 4, lines 4-9]. Lin also discloses the ringing containing tone patterns for each available musical score, once the operator selects the musical scores and provides these to ringing tone logic 75 within the HLR for calculating ringing tone patterns for each of the musical scores to be downloaded to the MS [col. 4, lines 39-55, emphasis added]. The appellant further argues that Lin does not disclose generating a tone for playing a melody in accordance with said melody data, by using said fetched tone information. However, the examiner respectfully disagrees as Lin discloses, generating of tones; thus, melody, which comprises series of sounds, that make up "ring tones" [col. 3, lines 9-29 and col. 4, lines 1-11].

II. Appellant argues that Yoshino fails to make up for the deficiencies of Lin. Specifically, Appellant argues that Yoshino does not teach modulation processing with Lin mobile station so that the set ringing tones in the musical scores could be executed as ringing tone on the mobile station. However, the examiner respectfully disagrees. As discussed above, Lin teaches generating tones based on tone information. Yoshino is solely relied upon to teach the specific computation steps of the present invention [col. 4, lines 32-40], and

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further teaches periodically controlling means to control the rhythm of a melody to be reproduced [col. 2, lines 54-55, col. 6, lines 16-27]. The examiner contends that Lin and Yoshino are combinable because they are from the same field of endeavour, which is tone information contained in melody data constitutes tone parameters used for modulation processing; i.e., extracting frequency components from audio signals, which corresponds to ringing or tone parameters. One of ordinary skill in the art would have been motivated to modify Lin to include Yoshino to ensure that modulation processing so that ringing tones in the musical scores can be executed as ringing tone patterns on the MS and means for timing signal for setting a tempo, which plays music at a relative speed in accordance with the melody data being received.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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